

State of Washington  
Department of Ecology

In the Matter of Remedial Action by:  
Burlington Environmental, LLC  
Agreed Order  
No. DE 23641

To: Burlington Environmental, LLC  
20245 77th Avenue South  
Kent, Washington 98032

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Exhibit A Remedial Action Location Diagram

## 1. Introduction

The mutual objective of the State of Washington, Department of Ecology (Ecology) and Burlington Environmental, LLC, a Clean Earth Environmental Solutions, Inc. company under this Agreed Order (Order) is to provide for remedial action at a facility where there has been a release or threatened release of hazardous substances. This Order requires Burlington Environmental, LLC (Burlington Environmental) to implement the Cleanup Action Plan. Ecology believes the actions required by this Order are in the public interest.

## 2. Jurisdiction

This Order is issued pursuant to the Model Toxics Control Act (MTCA), RCW 70A.305.050(1).

## 3. Parties Bound

This Agreed Order shall apply to and be binding upon the Parties to this Order, their successors and assigns. The undersigned representative of each Party hereby certifies that he or she is fully authorized to enter into this Order and to execute and legally bind such Party to comply with this Order. Burlington Environmental agrees to undertake all actions required by the terms and conditions of this Order. No change in ownership or corporate status shall alter Burlington Environmental's responsibility under this Order. Burlington Environmental shall provide a copy of this Order to all agents, contractors, and subcontractors retained to perform work required by this Order and shall ensure that all work undertaken by such agents, contractors, and subcontractors complies with this Order.

## 4. Definitions

Unless otherwise specified herein, the definitions set forth in RCW 70A.305 and WAC 173-340 shall control the meanings of the terms in this Order.

### 4.1 Agreed Order or Order

Refers to this Order and each of the exhibits to this Order. All exhibits are integral and enforceable parts of this Order.

### 4.2 Area of Concern (AOC)

Refers to any area of the Facility where a release of dangerous constituents (including dangerous waste and hazardous substances) has occurred, is occurring, is suspected to have occurred, or threatens to occur.

#### 4.3 Cleanup Action Plan (CAP)

Refers to the document issued by Ecology under WAC 173-340-380 that selects Facility-specific corrective measures and specifies cleanup standards (cleanup levels, points of compliance, and other requirements for the corrective measures).

#### 4.4 Cleanup Standards

Refers to the standards promulgated under RCW 70A.305.030(2)(e) and include (1) hazardous substance concentrations (cleanup levels) that protect human health and the environment, (2) the location at the Facility where those cleanup levels must be attained (points of compliance), and (3) additional regulatory requirements that apply to a cleanup because of the type of action and/or the location of the Facility.

#### 4.5 Corrective Action

Refers to any activities including investigations, studies, characterizations, and corrective measures, including actions taken pursuant to RCW 70A.305 and WAC 173-340, undertaken in whole or in part to fulfill the requirements of WAC 173-303-64620.

#### 4.6 Corrective Measure

Refers to any measure or action to control, prevent, or mitigate release(s) and/or potential release(s) of dangerous constituents (including dangerous waste and hazardous substances) reviewed and approved by Ecology for the Facility and set forth in a Facility-specific CAP prepared in compliance with the requirements of WAC 173-340, including WAC 173-340-360. Corrective measures may include interim actions as defined by WAC 173-340. Interim actions will not necessarily be set forth in a Facility specific CAP.

#### 4.7 Dangerous Constituent or Dangerous Waste Constituent

Refers to any constituent identified in WAC 173-303-9905 or 40 C.F.R. part 264, appendix IX; any constituent that caused a waste to be listed or designated as dangerous under the provisions of WAC 173-303; and any constituent defined as a hazardous substance under RCW 70A.305.020(13).

#### 4.8 Dangerous Waste

Refers to any solid waste designated in WAC 173-303-070 through -100 as dangerous or extremely hazardous or mixed waste. Dangerous wastes are considered hazardous substances under RCW 70A.305.020(13).

#### 4.9 Dangerous Waste Management Facility

Used interchangeably in this document with the term "Facility."

#### 4.10 Dangerous Waste Management Unit (DWMU)

Refers to a contiguous area of land on or in which dangerous waste is placed, or the largest area in which there is a significant likelihood of mixing dangerous waste constituents in the same area, as defined in WAC 173-303-040.

#### 4.11 Facility

Refers to the DWMU owned by Burlington Environmental located at 20245 77th Avenue South, Kent, Washington; all property contiguous to the DWMU also owned by Burlington Environmental; and all property, regardless of control, affected by release(s) or threatened release(s) of hazardous substances, including dangerous wastes and dangerous constituents, at and from these areas. "Facility" also includes the definition found in RCW 70A.305.020(8). The Facility is generally depicted in the diagram attached as Exhibit A to this Order.

#### 4.12 Feasibility Study

Refers to the investigation and evaluation of potential corrective measures performed in accordance with the FS requirements of WAC 173-340-350, which includes the substantive requirements for a Resource Conservation and Recovery Act Corrective Measures Study, and which is undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620.

#### 4.13 Parties

Refers to the State of Washington, Department of Ecology and Burlington Environmental.

#### 4.14 Potentially Liable Person (PLP)

Refers to Burlington Environmental.

#### 4.15 Permit or Permitting Requirement

Unless otherwise specified, refers to the requirements of WAC 173-303 for applying for, obtaining, maintaining, modifying, and terminating Dangerous Waste Management Facility permits.

#### 4.16 RCRA

Refers to the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901–6992k.

#### 4.17 RCRA Facility Assessment (RFA)

Refers to the United States Environmental Protection Agency (EPA) conducted investigation of release(s) and potential release(s) at the Dangerous Waste Management Facility and the information contained in the report entitled the Science Applications International Corporation (SAIC), 1996, RCRA Facility Assessment, Preliminary Review/VSI Report, Burlington Environmental, Inc., Kent, Washington (RFA Report). The RFA Report is incorporated into this Order by this reference as if fully set forth herein.

#### 4.18 Release

Refers to any intentional or unintentional spilling, leaking, pouring, emitting, emptying, discharging, injecting, pumping, escaping, leaching, dumping, or disposing of dangerous waste or dangerous constituents into the environment. It also includes the abandonment or discarding of barrels, containers, and other receptacles containing dangerous waste or dangerous constituents, and includes the definition of “release” in RCW 70A.305.020(32).

#### 4.19 Remedial Investigation (RI)

Refers to a facility-wide investigation and characterization performed in accordance with the requirements of WAC 173-340, which includes the substantive requirements for a RCRA facility investigation, undertaken in whole or in part to fulfill the corrective action requirements of WAC 173-303-64620.

#### 4.20 Solid Waste Management Unit (SWMU)

Refers to any discernible location at the Dangerous Waste Management Facility where solid wastes have been placed at any time, irrespective of whether the location was intended for the management of solid or dangerous waste. Such locations include any area at the Dangerous Waste Management Facility at which solid wastes, including spills, have been routinely and systematically released, and include regulated units as defined by WAC 173-303.

### 5. Findings of Fact

Ecology makes the following findings of fact, without any express or implied admissions of such facts by Burlington Environmental:

#### 5.1

The Burlington Environmental Facility (Facility) is located within King County, in the South East ¼ of Section 1, Township 22 North, Range 4 East. The Facility is in the Green River Valley, roughly 2 miles north of downtown Kent and 4 miles south of the City of Renton. The Facility and surrounding area are zoned for general industrial land use by the City of Kent (City of Kent, 2002). The Facility is located on a 6.25-acre parcel of land that can be divided into two areas, the waste management facility on the eastern 3 acres of the Facility, and the 10-day hazardous waste transfer yard on the western 3.25 acres of the Facility.

#### 5.2

Prior to 1980, the operations at the Facility were primarily agricultural. The Facility was developed in 1980 by Crosby and Overton, Inc. for the purpose of storing oily wastewater and began hazardous waste management activities. The Facility was

acquired by Chemical Processors Inc. in October of 1989. Chemical Processors Inc. (Chempro), a majority owned subsidiary of Burlington Resources, Inc., acquired the Kent facility from Crosby and Overton, Inc., in October 1989. Chempro continued to operate the Kent facility as a storage and treatment facility for hazardous wastes. In January 1992, Chempro changed its name to Burlington Environmental, Inc. (BEI). In December 1993, Philip Environmental Inc., a Canadian company, purchased BEI. In August 1997, Philip Environmental merged with two other publicly traded companies to form Philip Services Corp. In 1999, Philip Services Corp. reorganized under Chapter 11 bankruptcy and emerged from the financial restructuring in 2000 as Philip Services Corporation. Philip Services Corporation filed Chapter 11 bankruptcy on June 2, 2003, in Houston, Texas. Philip Services Corporation emerged from the financial restructuring on December 31, 2003. The ownership of the Kent Facility did not change in any of the corporate acquisitions, mergers, or reorganization of the Philip parent company. BEI continued to be the legal owner of the facility and a wholly owned subsidiary of Philip Services Corporation. In April 2014, Stericycle Environmental Solutions acquired PSC Environmental Services, LLC and its subsidiaries. In April 2020, Stericycle, Inc. sold its subsidiary Stericycle Environmental Solutions, Inc. to CEI Holding LLC, a wholly-owned indirect subsidiary of Harsco Corporation (HSC).

### 5.3

The Facility has an office, a process containment building, container storage areas, a tank farm (aboveground storage tanks), and a treatment and solidification building.

### 5.4

Burlington Environmental owned the Clean Earth Kent facility as a Dangerous Waste Management Facility on or after November 19, 1980, the date which subjects facilities to RCRA permitting requirements, including interim status requirements pursuant to RCRA, 42 U.S.C. § 6925, and implementing regulations thereunder, and including authorized state regulations promulgated in WAC 173-303.

### 5.5

On March 16, 2021, Burlington Environmental notified Ecology of its dangerous waste management activities. In the notification, Burlington Environmental identified itself as managing dangerous wastes at Burlington Environmental. Pursuant to the 1988 notification, Burlington Environmental was issued identification number WAD 9912 81767 by EPA.

### 5.6

On March 16, 2021, Burlington Environmental submitted to Ecology Part A of the RCRA permit application. Burlington Environmental manages dangerous wastes: that includes the following DOT Hazard Classes: Compressed Gases (2.1, 2.2 & 2.3), Flammables (3, 4.1

& 4.2), Dangerous When Wet (4.3), Oxidizers/Organic Peroxides (5.1 & 5.2), Poisons/Toxics (6.1), Corrosives – Acids and Bases (8), and Class 9 – Miscellaneous (9). The DW is treated and stored in tanks and in containers at the Kent Facility. See Exhibit E (Permit, WAD 9912 81767, for the Storage and Treatment of Dangerous Waste, Section D, Process Information) for details on the wastes, the storage capacities, and management units.

## 5.7

Burlington Environmental updated the Part A on March 16, 2021 for their Permit, WAD 9912 81767, for the Storage and Treatment of Dangerous Waste.

## 5.8

Between 1993 and 1996, EPA performed an RFA at the Dangerous Waste Management Facility. The purpose of an RFA is to identify those areas at the Dangerous Waste Management Facility where release(s) of hazardous substances, as defined in RCW 70A.305.020(13), may have occurred or may be occurring.

## 5.9

A final dangerous waste management facility permit was issued in accordance with the applicable provisions of the Hazardous Waste Management Act, Chapter 70A.300 Revised Code of Washington (RCW), and the regulations promulgated there under in Chapter 173-303 Washington Administrative Code (WAC) to Burlington Environmental, LLC (PSC) Kent facility. This permit went into effect on June 25, 2012. This permit, No. WAD 991 281 767, is for the storage and treatment of dangerous waste.

## 5.10

As required by the State Dangerous Waste Permit, Stericycle Burlington Environmental completed an Agency Review Draft Remedial Investigation Report and Feasibility Study. After public notice, Ecology approved the RI and FS as final. Final Remedial Investigation (FRI) Report prepared by PSC Kent Facility, Geomatrix Consultants, Inc., in December, 2007, and a Final Feasibility Study (FFS) prepared by Dalton, Olmstead, & Fuglevand, in June, 2017. The Permit also requires that Burlington Environmental submit an agency review draft a Cleanup Action Plan that satisfies the requirements of WAC 173-340-400 (Cleanup Actions) and to concurrently satisfy the corrective action requirements of WAC 173-303-646.

## 5.11

Ecology has identified the following SWMUs and AOCs at the Dangerous Waste Management Facility. The dangerous waste and dangerous constituents from SWMUs and AOCs at the Dangerous Waste Management Facility are documented in the RI Report and summarized herein.

- 5.11.1 AOC-1: Former Underground Storage Tanks (USTs). AOC-1 is the area where three USTs (16,000-gallon gasoline, 10,000-gallon diesel, and 5,000-gallon gasoline) were located between the current north and south container storage pads. In 1989, investigations were conducted at AOC-1 to evaluate the soil conditions adjacent to the USTs. Three soil borings subsequently converted to monitoring wells, were completed in this area. The USTs were removed in January 1991. After removal of the 5,000-gallon UST, petroleum contamination was noted on the groundwater surface approximately 10 feet below ground surface (bgs). Following the excavation of approximately 705 cubic yards of contaminated soil, confirmation samples were collected from the sidewalls and bottom of the excavation.
- 5.11.2 AOC-2: Tank Farm Area. AOC-2 is located in the northeastern corner of the site and consists of aboveground storage tank (AST) units containing petroleum products, various solvents, caustics, and treatment operations. The ASTs are located within containment structures. Investigations were conducted in the tank farm area in June 1989 and March 1990. Multiple soil and groundwater samples have been collected during the various phases of the RI to evaluate the extent of constituents of potential concern (COPCs) in this area. Additional soil sampling was conducted in October 2015, after three ASTs were removed as a part of capital improvements at the facility in 2016. Stericycle excavated approximately two to four feet of soil from beneath these tank footprints prior to their replacement. Another tank was removed in 2017 where similar methods were used for sampling soil underneath once the tank was removed and excavating underlying soil to three to five feet below ground surface. Sampling results and excavation documentation information were presented to Ecology in June 2016 and April 2017 (Dalton, Olmstead, & Fuglevand technical memorandums).
- 5.11.3 AOC-3: Stabilization Area. AOC-3, the stabilization area, is located south of AOC-2 and consists of a concrete-lined pit. The area also includes three aboveground storage tanks. The initial investigation in the stabilization area consisted of a hand auger boring outside of the stabilization building (ADL, 1989). Two monitoring wells were completed near the building in 1989, and soil samples were collected for analysis (SEE, 1989). Two borings (HA-2 and HA-3) were completed in July 2000 as part of the RI to determine whether sumps associated with the stabilization pit had leaked (PSC, 2000a through c; PSC, 2001a). Additional sampling was conducted in 2010 as part of a data gaps investigation, after a secondary containment failure was documented in this area. In 2013, soil samples were collected under Tank 5307 as part of the closure process. One single boring was advanced below the base of the pit liner, and two soil samples were collected from the boring.



- 5.11.4 AOC-4: Stormwater Drainage System. AOC-4 includes the Facility's stormwater drainage system, the associated catch basins and sumps, underground piping, and the formerly exposed ditch on the north side of the site. In January 1999, an abandoned pipeline was encountered. The abandoned pipeline released approximately 10 to 15 gallons of a diesel and water mixture (PSC, 1999). Confirmation soil samples were collected following the removal of petroleum-affected soils. In February 1999, Stericycle personnel found another deteriorating pipeline beneath the main driveway. In March 1999, the deteriorating pipeline was removed, visibly contaminated soil was excavated, and confirmation soil samples were collected (PSC, 2000 a through c; PSC, 2001a). In May 2002, during replacement of the stormwater pipelines just south and east of the process containment building, soil surrounding the pipelines was excavated. Confirmation soil samples were collected from the excavations prior to backfilling the excavations with clean fill. In 2000, soil samples were also collected near catch basins that are part of the stormwater management system to evaluate the potential for releases.
- 5.11.5 AOC-5: Process and Storage Area. AOC-5 consists of the current and former process and storage areas, including the current can crush area, the north container loading/unloading pad, the process containment building, the indoor lab pack area, the north and south container storage pads, the check-in pad, and assorted storage areas.
- 5.11.6 RCRA 10-day hazardous waste transfer yard: The transfer yard is a 3.25-acre parcel that comprises the transfer yard was created in 2001 on an undeveloped area on the west side of the property. Multiple soil and groundwater samples have been collected in the transfer yard, including three new groundwater monitoring wells installed as part of the data gaps investigation.
- 5.11.7 On-site room reserved for continued TSCA-related waste and mixed TSCA/ Dangerous waste processing. Other operations that were regulated under WAC 173-303 were discontinued in 2017, and remaining practices are regulated by the Washington Solid Waste Code (non-federal Hazardous or State dangerous wastes and Household hazardous waste). The on-site processing room is permitted and regulated by the Washington Solid Waste Code (as non-federal Hazardous or State dangerous wastes and Household hazardous waste).

## 5.12

Release(s) and/or potential release(s) of hazardous substances include, but are not limited to, the following.

- 5.12.1 The primary source of released contaminants at the Facility are from tanks and piping and constituents spilled at the Site, impacting the soil and groundwater. Contaminants may migrate and cause impacts to offsite groundwater, and indoor air of buildings close in proximity. There is evidence that volatile compounds may migrate from soil gas form to outdoor air during excavation work. Constituents in the groundwater are at risk of migrating to surface water from the drainage ditch at the northern border of the Facility. The tank farm may be the primary source for release of contaminants into the soil and groundwater based on historical data.
- 5.12.2 There is evidence of vinyl chloride in the groundwater with declining concentrations and there is evidence of biodegradation. There is one well where vinyl chloride has been detected in the last five years (MW-120-1). Arsenic levels in the groundwater have remained constant. Iron concentrations have remained constant.
- 5.12.3 The asphalt surface cover minimizes leeching into the soil and groundwater, but COCs in the soils that have direct contact with groundwater could contaminate the groundwater.
- 5.12.4 Chlorinated ethenes have been detected in the groundwater. Vinyl chloride has been detected in the groundwater above the CUL in areas AOC-2 and AOC-3. AOC-2 is the location of the historically highest concentrations of arsenic. In AOC-2 there was an arsenic measurement of 60 micrograms per liter in 2018 from well MW-123-S. In wells MW-102-I, MW-117-I2, and MW-126-I have consistently shown arsenic levels of 20 micrograms per liter, with an upward trend in MW-117-I2.
- 5.12.5 Benzene, benzo(b)fluorathene, chrysene, arsenic, cyanide, and TPH (likely TPH-G, TPH-D, and TPH-O) have been found in the soil. There are higher concentrations of petroleum constituents in near surface-soil than in deeper soil in areas impacted by petroleum. This suggests a surficial release.

## 5.13

Hazardous substances have been and may continue to be released from the Dangerous Waste Management Facility into the environment including surface water drainage areas; groundwater beneath and beyond the Dangerous Waste Management Facility; air; human work areas; and floral and faunal habitats.

## 6. Ecology Determinations

Ecology makes the following determinations, without any express or implied admissions of such determinations (and underlying facts) by Burlington Environmental.

### 6.1

Burlington Environmental is a person within the meaning of RCW 70A.305.020(24).

### 6.2

Burlington Environmental is the owner of a Dangerous Waste Management Facility that has operated, is operating, or should have been operating under interim status or a final facility permit, subject to RCRA, 42 U.S.C. §§ 6924 and 6925, and regulations promulgated thereunder, including authorized state regulations in WAC 173-303.

Burlington Environmental is also an “owner or operator” as defined by RCW 70A.305.020(22) of a “facility” as defined by RCW 70A.305.020(8).

### 6.3

Certain waste and constituents found at the Facility are dangerous wastes and/or dangerous constituents as defined by WAC 173-303 and in Section IV (Definitions) of this Order.

### 6.4

These dangerous wastes and dangerous constituents are considered hazardous substances within the meaning of RCW 70A.305.020(13).

### 6.5

Based on the Findings of Fact and the administrative record, Ecology has determined that release(s) and potential release(s) of hazardous substances at and/or from the Facility present a threat or potential threat to human health and the environment.

### 6.6

Based upon credible evidence, Ecology issued a PLP status letter to Burlington Environmental dated August 12, 2024, pursuant to RCW 70A.305.040, .020(26), and WAC 173-340-500. After providing for notice and opportunity for comment, reviewing any comments submitted, and concluding that credible evidence supported a finding of potential liability, Ecology issued a determination that Burlington Environmental, LLC (a Clean Earth Environmental Solutions Inc. Company) is a PLP under RCW 70A.305.040 and notified Burlington Environmental, LLC of this determination by letter dated August 12, 2024.

### 6.7

Pursuant to RCW 70A.305.030(1), .050(1), Ecology may require PLPs to investigate or conduct other remedial actions with respect to any release or threatened release of

hazardous substances, whenever it believes such action to be in the public interest. Based on the foregoing facts, Ecology believes the remedial actions required by this Order are in the public interest.

## 6.8

Under WAC 173-340-430, an interim action is a remedial action that is technically necessary to reduce a threat to human health or the environment by eliminating or substantially reducing one or more pathways for exposure to a hazardous substance, that corrects a problem that may become substantially worse or cost substantially more to address if the remedial action is delayed, or that is needed to provide for completion of a Facility hazard assessment, remedial investigation/feasibility study, or design of a cleanup action plan. Either party may propose an interim action under this Order. If the Parties are in agreement concerning the interim action, the Parties will follow the process in Section VII.E. If the Parties are not in agreement, Ecology reserves its authority to require interim action(s) under a separate order or other enforcement action under RCW 70A.305, or to undertake the interim action itself.

## 7. Work to be Performed

Based on the Findings of Fact and Ecology Determinations, it is hereby ordered that Burlington Environmental take the following remedial actions at the Site. These remedial actions must be conducted in accordance with WAC 173-340:

### 7.1

Burlington Environmental will implement the Cleanup Action Plan for the Facility in accordance with the schedule and terms of the Schedule, Exhibit C, and all other requirements of this Order.

### 7.2

If Burlington Environmental learns of a significant change in conditions at the Facility, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in soil, groundwater, surface water, and/or air, Burlington Environmental, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

### 7.3

If Burlington Environmental learns of a significant change in conditions at the Site, including but not limited to a statistically significant increase in contaminant and/or chemical concentrations in any media, Burlington Environmental, within seven (7) days of learning of the change in condition, shall notify Ecology in writing of said change and

provide Ecology with any reports or records (including laboratory analyses, sampling results) relating to the change in conditions.

## **7.4**

Burlington Environmental shall submit to Ecology written semiannual Progress Reports that describe the actions taken during the previous six months to implement the requirements of this Order. All Progress Reports shall be submitted by the tenth (10th) day of the month in which they are due after the effective date of this Order. Unless otherwise specified by Ecology, Progress Reports and any other documents submitted pursuant to this Order shall be sent by certified mail, return receipt requested including an electronic copy sent via email or a CD-ROM containing an electronic Acrobat PDF copy of the documents, to Ecology's project coordinator. The Progress Reports shall include the following:

### **7.4.1**

A list of on site activities that have taken place during the reporting period [or since the last Progress Report].

### **7.4.2**

Detailed description of any deviations from required tasks not otherwise documented in project plans or amendment requests.

### **7.4.3**

Description of all deviations from the Schedule (Exhibit C) during the current 6 months and any planned deviations in the upcoming 6 months.

### **7.4.4**

For any deviations in schedule, a plan for recovering lost time and maintaining compliance with the schedule.

### **7.4.5**

All raw data (including laboratory analyses) received during the previous quarter (if not previously submitted to Ecology), together with a detailed description of the underlying samples collected.

### **7.4.6**

A list of deliverables for the upcoming 6 months.

## **7.5 Financial Assurance**

### **7.5.1**

Financial assurance for corrective action is required by WAC 173-303-64620. Ecology's Financial Assurance Officer shall determine when Burlington Environmental's actions and submissions meet the requirements of WAC 173-303-64620.

#### **7.5.2**

Ecology's Financial Assurance Officer is:

Joanna Richards  
Washington State Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600  
Phone: 360-407-7220  
Fax: 360-407-6715  
Email: joar461@ecy.wa.gov

### **7.6**

As detailed in the Cleanup Action Plan, institutional controls are required at the Site. Environmental (Restrictive) Covenants will be used to implement the institutional controls.

#### **7.6.1**

In consultation with Burlington Environmental, Ecology will prepare the Environmental (Restrictive) Covenants consistent with WAC 173-340-440, RCW 64.70, and any policies or procedures specified by Ecology. The Environmental (Restrictive) Covenants shall restrict future activities and uses of the Site as agreed to by Ecology and Burlington Environmental.

#### **7.6.2**

After approval by Ecology, Burlington Environmental shall record the Environmental (Restrictive) Covenant for affected properties it owns with the office of the King County Auditor as detailed in the Schedule (Exhibit C). Burlington Environmental shall provide Ecology with the original recorded Environmental (Restrictive) Covenants within thirty (30) days of the recording date.

### **7.7**

All plans or other deliverables submitted by Burlington Environmental for Ecology's review and approval under the Schedule (Exhibit C) shall, upon Ecology's approval,

become integral and enforceable parts of this Order. Burlington Environmental shall take any action required by such deliverable.

## 7.8

Any Party may propose an additional interim action under this Order. If the Parties are in agreement concerning the additional interim action, Burlington Environmental shall prepare and submit to Ecology an Interim Action Work Plan, including a scope of work and schedule, by the date determined by Ecology. Ecology will provide public notice and opportunity to comment on the Interim Action Work Plan in accordance with WAC 173-340-600(16). Burlington Environmental shall not conduct the interim action until Ecology approves the Interim Action Work Plan. Upon approval by Ecology, the Interim Action Work Plan becomes an integral and enforceable part of this Order, and Burlington Environmental is required to conduct the interim action in accordance with the approved Interim Action Work Plan. Ecology reserves its authority to require additional interim action(s) under a separate order or other enforcement action under RCW 70A.305, or to undertake the interim action(s) itself.

## 7.9

If Ecology determines that Burlington Environmental has failed to make sufficient progress or failed to implement the remedial action, in whole or in part, Ecology may, after notice to Burlington Environmental, perform any or all portions of the remedial action or at Ecology's discretion allow Burlington Environmental opportunity to correct. In an emergency, Ecology is not required to provide notice to Burlington Environmental, or an opportunity for dispute resolution. Burlington Environmental shall reimburse Ecology for the costs of doing such work in accordance with Section VIII.A (Payment of Remedial Action Costs). Ecology reserves the right to enforce requirements of this Order under Section 10 (Enforcement).

## 7.10

Except where necessary to abate an emergency situation or where required by law, Burlington Environmental shall not perform any remedial actions at the Site outside those remedial actions required by this Order to address the contamination that is the subject of this Order, unless Ecology concurs, in writing, with such additional remedial actions pursuant to Section 8.11 (Amendment of Order). In the event of an emergency, or where actions are taken as required by law, Burlington Environmental must notify Ecology in writing of the event and remedial action(s) planned or taken as soon as practical but no later than within twenty-four (24) hours of the discovery of the event.

## 8. Terms and Conditions

### 8.1 Payment of Remedial Action Costs

Burlington Environmental shall pay to Ecology costs incurred by Ecology pursuant to this Order and consistent with WAC 173-340-550(2). These costs shall include work performed by Ecology or its contractors for, or on, the Site under RCW 70A.305, including remedial actions and Order preparation, negotiation, oversight, and administration. These costs shall include work performed both prior to and subsequent to the issuance of this Order. Ecology's costs shall include costs of direct activities and support costs of direct activities as defined in WAC 173-340-550(2). For all Ecology costs incurred, Burlington Environmental shall pay the required amount within thirty (30) days of receiving from Ecology an itemized statement of costs that includes a summary of costs incurred, an identification of involved staff, and the amount of time spent by involved staff members on the project. A general statement of work performed will be provided upon request. Itemized statements shall be prepared quarterly. Pursuant to WAC 173-340-550(4), failure to pay Ecology's costs within ninety (90) days of receipt of the itemized statement of costs will result in interest charges at the rate of twelve percent (12%) per annum, compounded monthly.

In addition to other available relief, pursuant to RCW 19.16.500, Ecology may utilize a collection agency and/or, pursuant to RCW 70A.305.060, file a lien against real property subject to the remedial actions to recover unreimbursed remedial action costs.

### 8.2 Designated Project Coordinators

The project coordinator for Ecology is:

Erin Hobbs  
15700 Dayton Ave N  
Shoreline, WA 98133  
425-515-5996  
eho461@ecy.wa.gov

The project coordinator for Burlington Environmental is:

Laura Dell'Olio, Senior Project Manager  
Environmental Risk Management  
20245 77th Ave S.  
Kent, WA 98032  
856-283-9089  
ladellolio@cleaneearthinc.com



Each project coordinator shall be responsible for overseeing the implementation of this Order. Ecology's project coordinator will be Ecology's designated representative for the Site. To the maximum extent possible, communications between Ecology and Burlington Environmental, and all documents, including reports, approvals, and other correspondence concerning the activities performed pursuant to the terms and conditions of this Order shall be directed through the project coordinators. The project coordinators may designate, in writing, working level staff contacts for all or portions of the implementation of the work to be performed required by this Order.

Any Party may change its respective project coordinator. Written notification shall be given to the other Party at least ten (10) calendar days prior to the change.

### 8.3 Performance

All geologic and hydrogeologic work performed pursuant to this Order shall be under the supervision and direction of a geologist or hydrogeologist licensed by the State of Washington or under the direct supervision of an engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43 and 18.220.

All engineering work performed pursuant to this Order shall be under the direct supervision of a professional engineer registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

All construction work performed pursuant to this Order shall be under the direct supervision of a professional engineer or a qualified technician under the direct supervision of a professional engineer. The professional engineer must be registered by the State of Washington, except as otherwise provided for by RCW 18.43.130.

Any documents submitted containing geologic, hydrogeologic, or engineering work shall be under the seal of an appropriately licensed professional as required by RCW 18.43 and 18.220.

Burlington Environmental shall notify Ecology in writing of the identity of any engineer(s) and geologist(s), contractor(s), subcontractor(s), and other key personnel to be used in carrying out the terms of this Order, in advance of their involvement at the Site.

### 8.4 Access

Ecology or any Ecology authorized representative shall have access to enter and freely move about all property at the Site that Burlington Environmental either owns, controls, or has access rights to at all reasonable times for the purposes of, inter alia: inspecting records, operation logs, and contracts related to the work being performed pursuant to this Order; reviewing Burlington Environmental's progress in carrying out the terms of this Order; conducting such tests or collecting such samples as Ecology may deem

necessary; using a camera, sound recording, or other documentary type equipment to record work done pursuant to this Order; and verifying the data submitted to Ecology by Burlington Environmental. Ecology or any Ecology authorized representative shall give reasonable notice before entering any Site property owned or controlled by Burlington Environmental unless an emergency prevents such notice. All persons who access the Site pursuant to this section shall comply with any applicable health and safety plan(s). Ecology employees and their representatives shall not be required to sign any liability release or waiver as a condition of Site property access.

Burlington Environmental shall make best efforts to secure access rights for those properties within the Site not owned or controlled by Burlington Environmental where remedial activities or investigations will be performed pursuant to this Order. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Burlington Environmental would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If, within [90] days after the effective date of this Order, Burlington Environmental is unable to accomplish what is required through "best efforts," they shall notify Ecology, and include a description of the steps taken to comply with the requirements. If Ecology deems it appropriate, it may assist Burlington Environmental, or take independent action, in obtaining such access and/or use restrictions. Ecology reserves the right to seek payment from Burlington Environmental for all costs, including cost of attorneys' time, incurred by Ecology in obtaining such access or agreements to restrict land, water, or other resource use.

## 8.5 Sampling, Data Submittal, and Availability

With respect to the implementation of this Order, Burlington Environmental shall make the results of all sampling, laboratory reports, and/or test results generated by it or on its behalf available to Ecology. Pursuant to WAC 173-340-840(5), all sampling data shall be submitted to Ecology in both printed and electronic formats in accordance with Section VII (Work to be Performed), Ecology's Toxics Cleanup Program Policy 840 (Data Submittal Requirements), and/or any subsequent procedures specified by Ecology for data submittal.

If requested by Ecology, Burlington Environmental shall allow Ecology and/or its authorized representative to take split or duplicate samples of any samples collected by Burlington Environmental pursuant to implementation of this Order. Burlington Environmental shall notify Ecology seven (7) days in advance of any sample collection or work activity at the Site. Ecology shall, upon request, allow Burlington Environmental and/or its authorized representative to take split or duplicate samples of any samples collected by Ecology pursuant to the implementation of this Order, provided that doing

so does not interfere with Ecology's sampling. Without limitation on Ecology's rights under Section 8.4 (Access), Ecology shall notify Burlington Environmental prior to any sample collection activity unless an emergency prevents such notice.

In accordance with WAC 173-340-830(2)(a), all hazardous substance analyses shall be conducted by a laboratory accredited under WAC 173-50 for the specific analyses to be conducted, unless otherwise approved by Ecology.

## **8.6 Public Participation**

Ecology shall maintain the responsibility for public participation at the Site. However, Burlington Environmental shall cooperate with Ecology, and shall:

### **8.6.1**

If agreed to by Ecology, develop appropriate mailing lists and prepare drafts of public notices and fact sheets at important stages of the remedial action, such as the submission of work plans, remedial investigation/feasibility study reports, cleanup action plans, and engineering design reports. As appropriate, Ecology will edit, finalize, and distribute such fact sheets and prepare and distribute public notices of Ecology's presentations and meetings.

### **8.6.2**

Notify Ecology's project coordinator prior to the preparation of all press releases and fact sheets, and before meetings related to remedial action work to be performed at the Site with the interested public and/or local governments. Likewise, Ecology shall notify Burlington Environmental prior to the issuance of all press releases and fact sheets related to the Site, and before meetings related to the Site with the interested public and local governments. For all press releases, fact sheets, meetings, and other outreach efforts by Burlington Environmental that do not receive prior Ecology approval, Burlington Environmental shall clearly indicate to its audience that the press release, fact sheet, meeting, or other outreach effort was not sponsored or endorsed by Ecology.

### **8.6.3**

When requested by Ecology, participate in public presentations on the progress of the remedial action at the Site. Participation may be through attendance at public meetings to assist in answering questions or as a presenter.

### **8.6.4**

When requested by Ecology, arrange and maintain a repository to be located at:

King County Library System  
Kent Regional Library  
212 2nd Avenue N.  
Kent, Washington 98032

At a minimum, copies of all public notices, fact sheets, and documents relating to public comment periods shall be promptly placed in these repositories. A copy of all documents related to this Site shall be maintained in the repository at Ecology's Northwest Region Office in Shoreline, Washington.

## 8.7 Access to Information

Burlington Environmental shall provide to Ecology, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Burlington Environmental's possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Order, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the work. Burlington Environmental shall also make available to Ecology, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the work.

Nothing in this Order is intended to waive any right Burlington Environmental may have under applicable law to limit disclosure of Records protected by the attorney work-product privilege and/or the attorney-client privilege. If Burlington Environmental withholds any requested Records based on an assertion of privilege, Burlington Environmental shall provide Ecology with a privilege log specifying the Records withheld and the applicable privilege. No Site-related data collected pursuant to this Order shall be considered privileged, including: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, biological, or engineering data, or the portion of any other record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondents are required to create or generate pursuant to this Order.

Notwithstanding any provision of this Order, Ecology retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under any other applicable statutes or regulations.

## 8.8 Retention of Records

During the pendency of this Order, and for ten (10) years from the date of completion of the work performed pursuant to this Order, Burlington Environmental shall preserve all records, reports, documents, and underlying data in its possession relevant to the implementation of this Order and shall insert a similar record retention requirement into all contracts with project contractors and subcontractors.

## 8.9 Resolution of Disputes

### 8.9.1

In the event that Burlington Environmental elects to invoke dispute resolution Burlington Environmental must utilize the procedure set forth below.

8.9.1.1 Upon the triggering event (receipt of Ecology's project coordinator's written decision or an itemized billing statement), Burlington Environmental has fourteen (14) calendar days within which to notify Ecology's project coordinator in writing of its dispute (Informal Dispute Notice).

8.9.1.2 The Parties' project coordinators shall then confer in an effort to resolve the dispute informally. The Parties shall informally confer for up to fourteen (14) calendar days from receipt of the Informal Dispute Notice. If the project coordinators cannot resolve the dispute within those fourteen (14) calendar days, then within seven (7) calendar days Ecology's project coordinator shall issue a written decision (Informal Dispute Decision) stating: the nature of the dispute; the [Subject PLP(s)'s] position with regards to the dispute; Ecology's position with regards to the dispute; and the extent of resolution reached by informal discussion.

8.9.1.3 Burlington Environmental may then request regional management review of the dispute. Burlington Environmental must submit this request (Formal Dispute Notice) in writing to the Northwest Region Toxics Cleanup Section Manager within seven (7) calendar days of receipt of Ecology's Informal Dispute Decision. The Formal Dispute Notice shall include a written statement of dispute setting forth: the nature of the dispute; Burlington Environmental's position with respect to the dispute; and the information relied upon to support its position.

8.9.1.4 The Section Manager shall conduct a review of the dispute and shall endeavor to issue a written decision regarding the dispute (Decision on Dispute) within thirty (30) calendar days of receipt of the Formal

Dispute Notice. The Decision on Dispute shall be Ecology's final decision on the disputed matter.

#### **8.9.2**

The Parties agree to only utilize the dispute resolution process in good faith and agree to expedite, to the extent possible, the dispute resolution process whenever it is used.

#### **8.9.3**

Implementation of these dispute resolution procedures shall not provide a basis for delay of any activities required in this Order, unless Ecology agrees in writing to a schedule extension.

#### **8.9.4**

In case of a dispute, failure to either proceed with the work required by this Order or timely invoke dispute resolution may result in Ecology's determination that insufficient progress is being made in preparation of a deliverable, and may result in Ecology undertaking the work under Section 7.1 (Work to be Performed) or initiating enforcement under Section 10 (Enforcement).

### **8.10 Extension of Schedule**

#### **8.10.1**

Burlington Environmental's request for an extension of schedule shall be granted only when a request for an extension is submitted in a timely fashion, generally at least thirty (30) days prior to expiration of the deadline for which the extension is requested, and good cause exists for granting the extension. All extensions shall be requested in writing. The request shall specify:

8.10.1.1 The deadline that is sought to be extended.

8.10.1.2 The length of the extension sought.

8.10.1.3 The reason(s) for the extension.

8.10.1.4 Any related deadline or schedule that would be affected if the extension were granted.

#### **8.10.2**

The burden shall be on Burlington Environmental to demonstrate to the satisfaction of Ecology that the request for such extension has been submitted in a timely fashion and that good cause exists for granting the extension. Good cause may include, but may not be limited to:

- 8.10.2.1 Circumstances beyond the reasonable control and despite the due diligence of Burlington Environmental including delays caused by unrelated third parties or Ecology, such as (but not limited to) delays by Ecology in reviewing, approving, or modifying documents submitted by Burlington Environmental.
- 8.10.2.2 A shelter in place or work stoppage mandated by state or local government order due to public health and safety emergencies.
- 8.10.2.3 Acts of God, including fire, flood, blizzard, extreme temperatures, storm, or other unavoidable casualty.
- 8.10.2.4 Endangerment as described in Section 8.12 (Endangerment).

However, neither increased costs of performance of the terms of this Order nor changed economic circumstances shall be considered circumstances beyond the reasonable control of Burlington Environmental.

### **8.10.3**

Ecology shall act upon any Burlington Environmental's written request for extension in a timely fashion. Ecology shall give Burlington Environmental written notification of any extensions granted pursuant to this Order. A requested extension shall not be effective until approved by Ecology. Unless the extension is a substantial change, it shall not be necessary to amend this Order pursuant to Section 8.11 (Amendment of Order) when a schedule extension is granted.

### **8.10.4**

At Burlington Environmental's request, an extension shall only be granted for such period of time as Ecology determines is reasonable under the circumstances. Ecology may grant schedule extensions exceeding ninety (90) days only as a result of one of the following:

- 8.10.4.1 Delays in the issuance of a necessary permit which was applied for in a timely manner.
- 8.10.4.2 Other circumstances deemed exceptional or extraordinary by Ecology.
- 8.10.4.3 Endangerment as described in Section 8.12 (Endangerment).

### 8.11 Amendment of Order

The project coordinators may verbally agree to minor changes to the work to be performed without formally amending this Order. Minor changes will be documented in writing by Ecology within seven (7) days of verbal agreement.

Except as provided in Section 8.13 (Reservation of Rights), substantial changes to the work to be performed shall require formal amendment of this Order. This Order may only be formally amended by the written consent of both Ecology and Burlington Environmental. Ecology will provide its written consent to a formal amendment only after public notice and opportunity to comment on the formal amendment.

When requesting a change to the Order, Burlington Environmental shall submit a written request to Ecology for approval. Ecology shall indicate its approval or disapproval in writing and in a timely manner after the written request is received. If Ecology determines that the change is substantial, then the Order must be formally amended. Reasons for the disapproval of a proposed change to this Order shall be stated in writing. If Ecology does not agree to a proposed change, the disagreement may be addressed through the dispute resolution procedures described in Section 8.9 (Resolution of Disputes).

### 8.12 Endangerment

In the event Ecology determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment on or surrounding the Site, Ecology may direct Burlington Environmental to cease such activities for such period of time as it deems necessary to abate the danger. Burlington Environmental shall immediately comply with such direction.

In the event Burlington Environmental determines that any activity being performed at the Site under this Order is creating or has the potential to create a danger to human health or the environment, Burlington Environmental may cease such activities. Burlington Environmental shall notify Ecology's project coordinator as soon as possible, but no later than twenty-four (24) hours after making such determination or ceasing such activities. Upon Ecology's direction, Burlington Environmental shall provide Ecology with documentation of the basis for the determination or cessation of such activities. If Ecology disagrees with Burlington Environmental's cessation of activities, it may direct Burlington Environmental to resume such activities.

If Ecology concurs with or orders a work stoppage pursuant to this section, Burlington Environmental's obligations with respect to the ceased activities shall be suspended until Ecology determines the danger is abated, and the time for performance of such activities, as well as the time for any other work dependent upon such activities, shall be



extended in accordance with Section 8.10 (Extension of Schedule) for such period of time as Ecology determines is reasonable under the circumstances.

Nothing in this Order shall limit the authority of Ecology, its employees, agents, or contractors to take or require appropriate action in the event of an emergency.

### **8.13 Reservation of Rights**

This Order is not a settlement under RCW 70A.305. Ecology's signature on this Order in no way constitutes a covenant not to sue or a compromise of any of Ecology's rights or authority. Ecology will not, however, bring an action against Burlington Environmental to recover remedial action costs paid to and received by Ecology under this Order. In addition, Ecology will not take additional enforcement actions against Burlington Environmental regarding remedial actions required by this Order, provided Burlington Environmental complies with this Order.

Ecology nevertheless reserves its rights under RCW 70A.305, including the right to require additional or different remedial actions at the Site should it deem such actions necessary to protect human health or the environment, and to issue orders requiring such remedial actions. Ecology also reserves all rights regarding the injury to, destruction of, or loss of natural resources resulting from the release or threatened release of hazardous substances at the Site.

By entering into this Order, Burlington Environmental does not admit to any liability for the Site. Although Burlington Environmental is committing to conducting the work required by this Order under the terms of this Order, Burlington Environmental expressly reserves all rights available under law, including but not limited to the right to seek cost recovery or contribution against third parties, and the right to assert any defenses to liability in the event of enforcement.

### **8.14 Transfer of Interest in Property**

No voluntary conveyance or relinquishment of title, easement, leasehold, or other interest in any portion of the Site shall be consummated by Burlington Environmental without provision for continued implementation of all requirements of this Order and implementation of any remedial actions found to be necessary as a result of this Order.

Prior to Burlington Environmental's transfer of any interest in all or any portion of the Site, and during the effective period of this Order, Burlington Environmental shall provide a copy of this Order to any prospective purchaser, lessee, transferee, assignee, or other successor in said interest; and, at least thirty (30) days prior to any transfer, Burlington Environmental shall notify Ecology of said transfer. Upon transfer of any interest, Burlington Environmental shall notify all transferees of the restrictions on the

activities and uses of the property under this Order and incorporate any such use restrictions into the transfer documents.

## **8.15 Compliance with Applicable Laws**

### **8.15.1 Applicable Laws**

All actions carried out by Burlington Environmental pursuant to this Order shall be done in accordance with all applicable federal, state, and local requirements, including requirements to obtain necessary permits or approvals, except as provided in RCW 70A.305.090. The permits or specific federal, state, or local requirements that the agency has determined are applicable and that are known at the time of the execution of this Order have been identified in Exhibit B (Cleanup Action Plan). Burlington Environmental has a continuing obligation to identify additional applicable federal, state, and local requirements which apply to actions carried out pursuant to this Order, and to comply with those requirements. As additional federal, state, and local requirements are identified by Ecology or Burlington Environmental, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order, and Burlington Environmental must implement those requirements.

### **8.15.2 Relevant and Appropriate Requirements.**

All actions carried out by Burlington Environmental pursuant to this Order shall be done in accordance with relevant and appropriate requirements identified by Ecology. The relevant and appropriate requirements that Ecology has determined apply have been identified in Exhibit B (Cleanup Action Plan). If additional relevant and appropriate requirements are identified by Ecology or Burlington Environmental, Ecology will document in writing if they are applicable to actions carried out pursuant to this Order and Burlington Environmental must implement those requirements.

### **8.15.3**

Pursuant to RCW 70A.305.090(1), Burlington Environmental may be exempt from the procedural requirements of RCW 70A.15, 70A.205, 70A.300, 77.55, 90.48, and 90.58 and of any laws requiring or authorizing local government permits or approvals. However, Burlington Environmental shall comply with the substantive requirements of such permits or approvals. For permits and approvals covered under RCW 70A.305.090(1) that have been issued by local government, the Parties agree that Ecology has the non-exclusive ability under this Order to enforce those local government permits and/or approvals. The exempt permits or approvals and the applicable substantive requirements of

those permits or approvals, as they are known at the time of the execution of this Order, have been identified in Exhibit B (Cleanup Action Plan).

#### **8.15.4**

Burlington Environmental has a continuing obligation to determine whether additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order. In the event either Ecology or Burlington Environmental determines that additional permits or approvals addressed in RCW 70A.305.090(1) would otherwise be required for the remedial action under this Order, it shall promptly notify the other Party of its determination. Ecology shall determine whether Ecology or Burlington Environmental shall be responsible to contact the appropriate state and/or local agencies. If Ecology so requires, Burlington Environmental shall promptly consult with the appropriate state and/or local agencies and provide Ecology with written documentation from those agencies of the substantive requirements those agencies believe are applicable to the remedial action. Ecology shall make the final determination on the additional substantive requirements that must be met by Burlington Environmental and on how Burlington Environmental must meet those requirements. Ecology shall inform Burlington Environmental in writing of these requirements. Once established by Ecology, the additional requirements shall be enforceable requirements of this Order. Burlington Environmental shall not begin or continue the remedial action potentially subject to the additional requirements until Ecology makes its final determination.

Pursuant to RCW 70A.305.090(2), in the event Ecology determines that the exemption from complying with the procedural requirements of the laws referenced in RCW 70A.305.090(1) would result in the loss of approval from a federal agency that is necessary for the state to administer any federal law, the exemption shall not apply and Burlington Environmental shall comply with both the procedural and substantive requirements of the laws referenced in RCW 70A.305.090(1), including any requirements to obtain permits or approvals.

#### **8.16 Periodic Review**

So long as remedial action continues at the Site, the Parties agree to review the progress of remedial action at the Site, and to review the data accumulated as a result of monitoring the Site as often as is necessary and appropriate under the circumstances. Unless otherwise agreed to by Ecology, at least every five (5) years after the initiation of cleanup action at the Site the Parties shall confer regarding the status of the Site and the need, if any, for further remedial action at the Site. At least ninety (90) days prior to each periodic review, Burlington Environmental shall submit a report to Ecology that documents whether human health and the environment are being protected based on

the factors set forth in WAC 173-340-420(4). Ecology reserves the right to require further remedial action at the Site under appropriate circumstances. This provision shall remain in effect for the duration of this Order.

#### **8.17 Indemnification**

Burlington Environmental agrees to indemnify and save and hold the State of Washington, its employees, and agents harmless from any and all claims or causes of action (1) for death or injuries to persons, or (2) for loss or damage to property, to the extent arising from or on account of acts or omissions of Burlington Environmental, its officers, employees, agents, or contractors in entering into and implementing this Order. However, Burlington Environmental shall not indemnify the State of Washington nor save nor hold its employees and agents harmless from any claims or causes of action to the extent arising out of the negligent acts or omissions of the State of Washington, or the employees or agents of the State, in entering into or implementing this Order.

### **9. Satisfaction of Order**

The provisions of this Order shall be deemed satisfied upon Burlington Environmental's receipt of written notification from Ecology that Burlington Environmental has completed the remedial activity required by this Order, as amended by any modifications, and that Burlington Environmental has complied with all other provisions of this Agreed Order.

### **10. Enforcement**

Pursuant to RCW 70A.305.050, this Order may be enforced as follows:

#### **10.1**

The Attorney General may bring an action to enforce this Order in a state or federal court.

#### **10.2**

The Attorney General may seek, by filing an action, if necessary, to recover amounts spent by Ecology for investigative and remedial actions and orders related to the Site.

#### **10.3**

A liable party who refuses, without sufficient cause, to comply with any term of this Order will be liable for:

##### **10.3.1**

Up to three (3) times the amount of any costs incurred by the State of Washington as a result of its refusal to comply.

**10.3.2**

Civil penalties of up to twenty-five thousand dollars (\$25,000) per day for each day it refuses to comply.

**10.4**

This Order is not appealable to the Washington Pollution Control Hearings Board. This Order may be reviewed only as provided under RCW 70A.305.070.

Effective date of this Order: \_\_\_\_\_

[Name of Subject PLP(s)]

State of Washington  
Department of Ecology

\_\_\_\_\_  
[Name of signatory]

\_\_\_\_\_  
Christa Colouzis  
Acting Section Manager  
Hazardous Waste & Toxics Reduction  
Program  
Northwest Regional Office  
425-324-1850

[Title of signatory]

[Location]

[Telephone]